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SENATE BILL 167

**53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

INTRODUCED BY

Gerald Ortiz y Pino

AN ACT

RELATING TO PRIVACY; ENACTING THE FREEDOM FROM UNWARRANTED  
SURVEILLANCE ACT; PROVIDING PENALTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be  
cited as the "Freedom from Unwarranted Surveillance Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the  
Freedom from Unwarranted Surveillance Act:

A. "drone" means a powered aerial vehicle that:

- (1) does not carry a human operator;
- (2) uses aerodynamic forces to provide vehicle  
lift;
- (3) can fly autonomously or be piloted  
remotely;
- (4) can be expendable or recoverable; and

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1 (5) can carry a lethal or non-lethal payload,  
2 including data or image collecting or transmitting devices;

3 B. "law enforcement agency" means any federal,  
4 state, tribal, county or municipal law enforcement agency in  
5 the state;

6 C. "surveillance" means the observation of a place,  
7 person, group or ongoing activity; and

8 D. "unmanned aircraft" means aircraft that is  
9 operated without the possibility of direct human intervention  
10 from within or on the aircraft.

11 SECTION 3. [NEW MATERIAL] PROHIBITION AGAINST  
12 SURVEILLANCE BY DRONE OR UNMANNED AIRCRAFT.--

13 A. A person, state agency, law enforcement agency  
14 or political subdivision of the state shall not use a drone or  
15 unmanned aircraft with the intent to gather evidence or other  
16 information pertaining to criminal conduct or conduct in  
17 violation of a statute or regulation on private property in  
18 which the property owners have a reasonable expectation of  
19 privacy, except to the extent authorized in a warrant. Data or  
20 information collection incidental or unrelated to a lawful  
21 activity shall not be used to obtain a warrant.

22 B. A person, state agency or political subdivision  
23 of the state shall not use a drone or unmanned aircraft to  
24 conduct surveillance of a person or of property owned by a  
25 person, a farm or an agricultural operation without the consent

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1 of that person, property owner, farm or agricultural operation.

2 SECTION 4. [NEW MATERIAL] USE OF DRONES OR UNMANNED  
3 AIRCRAFT UNDER EXIGENT CIRCUMSTANCES.--The Freedom from  
4 Unwarranted Surveillance Act does not prohibit the use of a  
5 drone by a law enforcement agency when exigent circumstances  
6 exist. For the purposes of this section, exigent circumstances  
7 exist if a law enforcement agency is engaged in hot pursuit or  
8 possesses reasonable suspicion that, under particular  
9 circumstances, swift action is necessary to prevent imminent  
10 danger to life.

11 SECTION 5. [NEW MATERIAL] WARRANTED SURVEILLANCE  
12 INFORMATION--CHAIN OF CUSTODY.--Any image, data or other  
13 material acquired by a state agency, political subdivision of  
14 the state or a law enforcement agency in compliance with the  
15 Freedom from Unwarranted Surveillance Act shall be maintained  
16 together with a complete and unbroken record of chain of  
17 custody consistent with law enforcement procedures.

18 SECTION 6. [NEW MATERIAL] REMEDIES--PENALTIES.--  
19 A. An aggrieved person may in a civil action obtain  
20 all appropriate relief to prevent or remedy a violation of the  
21 Freedom from Unwarranted Surveillance Act. The aggrieved  
22 person shall be exempt from prosecution or liability for  
23 engaging unilaterally in removing an offending drone or  
24 unmanned aircraft operating in violation of that act unless  
25 that unilateral action is otherwise prohibited by law.

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1           B. No information obtained or collected in  
2 violation of the Freedom from Unwarranted Surveillance Act  
3 shall be admissible as evidence in a civil or criminal  
4 proceeding in any court of law of the state or in an  
5 administrative hearing except to establish a violation of that  
6 act. Any such information shall be made available only for in-  
7 camera review and shall be released only to the aggrieved  
8 party.

9           C. A person who violates Section 3 of the Freedom  
10 from Unwarranted Surveillance Act is guilty of a petty  
11 misdemeanor and is punishable pursuant to Section 31-19-1 NMSA  
12 1978 and shall forfeit and relinquish all images, data and  
13 information collected to the aggrieved party. If a violator  
14 uses or disseminates any material collected in violation of the  
15 Freedom from Unwarranted Surveillance Act, that person is  
16 guilty of a misdemeanor punishable pursuant to Section 31-19-1  
17 NMSA 1978, and, for a second or subsequent violation, a  
18 violator is guilty of a fourth degree felony punishable  
19 pursuant to Section 31-18-15 NMSA 1978.